IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

MARY ANDREWS, Individually and on behalf of All Others Similarly Situated, ***Plaintiff,*** **v.** **TRG Customer Solutions, Inc. *d/b/a* IBEX Global Solutions,** ***Defendant.***	**)** **)** **)** **)** **)** **)** **)** **)** **)** **)** **)**	**CLASS AND COLLECTIVE ACTION** **CASE NO. ________________**

CLASS AND COLLECTIVE ACTION COMPLAINT

INTRODUCTION

1. Plaintiff Mary Andrews brings this lawsuit on behalf of herself and all similarly situated individuals as a collective action under 29 U.S.C. § 216(b) of the Fair Labor Standards Act ("FLSA") and under Tennessee law for unjust enrichment and breach of contract against Defendant TRG Customer Solutions, Inc. d/b/a IBEX Global Solutions ("IBEX" or "Defendant"). Plaintiff also asserts a class action claim, under Rule 23 of the Federal Rules of Civil Procedure, against the Defendant. Plaintiff seeks to recover unpaid wages owed to her and to all other similarly situated employees who have worked at IBEX's call center in Spring Hill, Tennessee, at any time within the six years before the filing of this lawsuit.

2. Plaintiff alleges that IBEX fails to pay its call center workers for all time worked by means of a company-wide and facility-wide policy and/or practice. Specifically, IBEX requires Plaintiff and other call center workers to perform various preparatory work activities before their paid shifts begin, including activities related to the operation of their computers.

Through this uniform policy or practice, IBEX deliberately fails to pay its employees for all time worked, including at overtime wages, in violation of the FLSA and Tennessee state law.

3. On behalf of herself and those she seeks to represent, Plaintiff seeks relief for, *inter alia*, unpaid wages, unpaid overtime wages, liquidated damages, costs, attorney's fees, and declaratory relief.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over Plaintiff's FLSA claims under 28 U.S.C. § 1331 and 29 U.S.C. §§ 201 *et seq*.

5. This Court also has supplemental jurisdiction over Plaintiff's state law unjust enrichment and breach of contract claims under 28 U.S.C. § 1367 because the state law claims are so related to the FLSA claims that they form part of the same case or controversy.

6. This Court has subject matter jurisdiction to issue a declaratory judgment under 28 U.S.C. § 2201 because an actual controversy exists between the parties, as set out in this Complaint.

7. Venue for this action properly lies in the Middle District of Tennessee, pursuant to 28 U.S.C. § 1391, because Defendant conducts business in this judicial district and because the claims arose in this judicial district.

PARTIES

8. Plaintiff Mary Andrews resides in Columbia, Maury County, Tennessee. Plaintiff Andrews worked for Defendant as a customer service agent from about July 2013 to September 2013 and from about October 2013 to January 2014.

9. Defendant TRG Customer Solutions is a Delaware Corporation doing business in the state of Tennessee, with its principal office in Washington, D.C. Defendant may be served

with a copy of the summons and complaint at Corporation Service Company, 2908 Poston Avenue, Nashville, Tennessee 37203.

10. IBEX Global Solutions is a trade name for TRG Customer Solutions, Inc.

11. At all relevant times, IBEX has been regularly engaged in interstate commerce.

12. At all relevant times, IBEX has been an enterprise within the meaning of § 3(r) and § 3(s)(1) of the FLSA, 29 U.S.C. §§ 203(r) & (s).

13. At all relevant times, IBEX has been an employer within the meaning of the FLSA, 29 U.S.C. §§ 203, 206-07.

FACTS

14. Defendant is a privately held company that operates 18 call centers across five countries, including the United States. Defendant employs over 9,000 customer service representatives in its call centers. Defendant's employees who work in the Spring Hill, Tennessee call center field calls from and provide assistance to, *inter alia*, DirecTV, Apple, and AT&T customers.

15. This matter concerns only those employees of Defendant who work, or worked, in Defendant's Spring Hill, Tennessee call center for AT&T. Plaintiff, and the call center employees she seeks to represent, are referred to herein as the Spring Hill AT&T Call Center Workers.

16. The Spring Hill AT&T Call Center Workers spend the vast majority of their time on the phone.

17. Defendant classifies the Spring Hill AT&T Call Center Workers as "non-exempt" under the FLSA and pays the Spring Hill AT&T Call Center Workers on an hourly basis.

18. Defendant instructs, requires, and/or permits the Spring Hill AT&T Call Center Workers to perform work "off the clock" without compensation.

19. Defendant employs a timekeeping system that does not capture all the time the Spring Hill AT&T Call Center Workers spend working each day, as defined by the FLSA. The Spring Hill AT&T Call Center Workers must enter a code into their phones to start and stop this timekeeping system.

20. Defendant requires the Spring Hill AT&T Call Center Workers to be ready to work at the beginning of their scheduled shifts. Defendant applies this practice and policy uniformly to Plaintiff and the class she seeks to represent.

21. The Spring Hill AT&T Call Center Workers must be ready to receive calls and process incoming customer service requests at their assigned scheduled start time. To be ready to do so by their scheduled start time, the Spring Hill AT&T Call Center Workers arrive at their workstations before their scheduled start times to perform integral and indispensable preparatory tasks, including: (1) turning on and booting up their computers; (2) starting up various programs; (3) logging onto various systems; (4) reading e-mails and training material; and (5) completing other essential tasks.

22. Once the Spring Hill AT&T Call Center Workers log into their phones, they begin to receive calls, which require the use of certain programs and systems on their computers. If they punch into their phones before booting up their computers, starting up various programs, logging into various systems, and/or completing other essential tasks, then they are unprepared and unable to fulfill customer requests.

23. Defendant does not pay the Spring Hill AT&T Call Center Workers for these integral and indispensable pre-shift tasks that are necessary for the workers' principal activity of assisting Defendant's customers.

24. Defendant's failure to pay all earned wages, including overtime compensation, due to the Spring Hill AT&T Call Center Workers is ongoing and willful.

COLLECTIVE ACTION ALLEGATIONS

25. Plaintiff asserts her FLSA claims pursuant to 29 U.S.C. § 216(b) as a collective action on behalf of the following potential opt-in litigants:

> All hourly-paid call center workers at Defendant's Spring Hill, Tennessee call center, for the three years preceding the filing of this lawsuit, who have performed uncompensated work activities related to AT&T services, as a result of the common policy or practice alleged herein (the "Collective Class").

26. Plaintiff seeks to pursue her claims on behalf of all individuals who opt into this action pursuant to 29 U.S.C. § 216(b).

27. Plaintiff and the Collective Class are "similarly situated" as that term is defined in 29 U.S.C. § 216(b) because, *inter alia*, Defendant did not pay for all hours worked, as mandated by the FLSA and under the law.

28. All, or virtually all, of the legal and factual issues that will arise in litigating the class claims are common to Plaintiff and the Collective Class. These issues include (1) whether and to what extent Defendant did not pay for all hours worked, (2) whether and to what extent these unpaid hours include hours worked over 40 in a week, and (3) whether and to what extent such overtime hours were compensated at one and one-half times the regular rate of pay.

CLASS ACTION ALLEGATIONS UNDER FEDERAL RULE OF CIVIL PROCEDURE 23

29. Plaintiff brings this action on her own behalf and, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of the following class of individuals:

> All hourly-paid call center workers at Defendant's Spring Hill, Tennessee call center, for the six years preceding the filing of this lawsuit, who performed uncompensated work activities related to AT&T services, as a result of the common policy or practice alleged herein (the "Rule 23 Class").

30. Plaintiff is a member of the class she seeks to represent.

31. The Rule 23 Class is sufficiently numerous that joinder of all members is impractical, satisfying Federal Rule of Civil Procedure 23(a)(1). There are hundreds of class members during the class period.

32. All members of the Rule 23 Class share the same pivotal questions of law and fact, thereby satisfying Federal Rule of Civil Procedure 23(a)(2). Namely, all members of the Rule 23 Class share the questions of (1) whether and to what extent Defendant did not pay for all hours worked, (2) whether and to what extent these unpaid hours include hours worked over 40 in a week, (3) whether and to what extent such overtime hours were compensated at one and one-half times the regular rate of pay, (4) whether Defendant's actions constituted unjust enrichment, and (5) whether Defendant's actions constituted a breach of contract.

33. Plaintiff's claims are typical of the claims of the Rule 23 Class, thus satisfying Federal Rule of Civil Procedure 23(a)(3). Defendant's failure to pay for all time worked was not the result of any Plaintiff-specific circumstances. Rather, it arose from Defendant's common payroll policies and practices, which Defendant applied to all call center workers at Defendant's Spring Hill, Tennessee facility.

34. Plaintiff will fairly and adequately represent and protect the interests of the Rule 23 Class. Further, Plaintiff has retained competent counsel experienced in representing classes of employees against their employers related to their employers' failure to pay them properly under the law, thus satisfying Federal Rule of Civil Procedure 23(a)(4).

35. By consistently failing to pay its call center workers for all hours worked, Defendant has acted on grounds that apply generally to all members of the Rule 23 Class, such that final injunctive relief and corresponding declaratory relief is appropriate respecting the class as a whole. Accordingly, Plaintiff is entitled to pursue her claims as a class action, pursuant to Federal Rule of Civil Procedure 23(b)(2).

36. By consistently failing to pay its call center workers for all hours worked, Defendant has created a scenario where questions of law and fact common to Rule 23 Class members predominate over any questions affecting only individual members. Thus, a class action is superior to other available methods for fair and efficient adjudication of this matter. Accordingly, Plaintiff is entitled to pursue their claims as a class action, pursuant to Federal Rule of Civil Procedure 23(b)(3).

FIRST CAUSE OF ACTION
(Violation of the Fair Labor Standards Act)

37. All previous paragraphs are incorporated as though fully set forth herein.

38. At all times material herein Plaintiff has been entitled to the rights, protections and benefits provided under the FLSA, 29 U.S.C. §§ 201 *et seq*.

39. Defendant is an employer covered by the FLSA.

40. Plaintiff is, and all similarly-situated employees are or were, a victim of a uniform, company-wide and facility-wide compensation policy that fails to record and compensate all time worked by call center employees, including time worked pre-shift.

41. The FLSA entitles employees to compensation for every hour worked in a workweek. *See* 29 U.S.C. § 206(b).

42. Some of the uncompensated time at issue is time worked in excess of forty (40) hours per week.

43. The FLSA requires that covered employees receive overtime compensation "not less than one and one-half times" their regular rate of pay for hours worked over 40 in a week. *See* 29 U.S.C. § 207.

44. Defendant has violated the FLSA by failing to compensate Plaintiff and the Collective Class on a daily basis for all time worked, including overtime.

45. In violation of the FLSA, Defendant acted willfully and with reckless disregard of clearly applicable FLSA provisions.

SECOND CAUSE OF ACTION
(Unjust Enrichment)

46. All previous paragraphs are incorporated as though fully set forth herein.

47. Plaintiff brings this claim on behalf of all members of the proposed classes.

48. Defendant is obligated to pay Plaintiff and the class members for all time worked, under Tennessee law.

49. Because of the wrongful activities described above, including the failure to pay wages due and owing, Defendant has received the benefit of Plaintiff's and the class members' unpaid labor and have therefore received money belonging to the Plaintiff and the classes.

50. Defendant was clearly aware of and appreciated the benefit that Plaintiff and similarly situated employees conferred on them.

51. Defendant has been unjustly enriched as a result of its accepting the work of Plaintiff and the classes without proper compensation for all time worked. It would be unjust to allow Defendant to enjoy the fruits of such employees' labor without proper compensation.

THIRD CAUSE OF ACTION
(Breach of Contract)

52. All previous paragraphs are incorporated as though fully set forth herein.

53. Plaintiff and the class members entered into employment agreements with Defendant whereby they agreed to perform work for Defendant in exchange for being compensated for all time worked.

54. The agreements were made between parties capable of contracting and contained mutual obligations and valid consideration.

55. Plaintiff and the class members have performed all conditions precedent, if any, required of them under the agreement.

56. Defendant failed and refused to perform their obligations in accordance with the terms and conditions of the agreement by failing to pay Plaintiff and the class members for all time worked on behalf of Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief on behalf of herself and all others similarly situated:

A. An order permitting this litigation to proceed as a collective action pursuant to 29 U.S.C. § 216(b) and a class action pursuant to Federal Rule of Civil Procedure 23;

B. Prompt notice, pursuant to 29 U.S.C. § 216(b) and to Federal Rules of Civil Procedure 23, of this litigation to all potential members of the class and collective action;

C. A declaration that Defendant has violated the FLSA;

D. A declaration that Defendant's violation of the FLSA was willful and knowing;

E. A judgment against Defendant and in favor of Plaintiff, and those she seeks to represent, for compensation for all unpaid and underpaid wages that Defendant has failed and refused to pay in violation of the FLSA and/or Tennessee law;

F. Prejudgment interest to the fullest extent permitted under the law;

G. Liquidated damages to the fullest extent permitted under the FLSA;

H. Litigation costs, expenses, and Plaintiff's attorneys' fees to the fullest extent permitted under the FLSA; and,

I. Such other and further relief as this Court deems just and proper.

Dated: October 9, 2014

Respectfully submitted,

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* *Pro Hac Vice* Motion Anticipated

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